

Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 9: ATTORNEY GENERAL

§194. PUBLIC CHARITIES

1. Definition. As used in this section and sections 194-A to 194-H and section 194-K, "public charity" means an entity formed primarily for charitable purposes, including but not limited to:

A. A corporation formed under Title 13 or Title 13-B primarily for charitable purposes; and [2001 , c. 550 , Pt. A , §1 (NEW) .]

B. A charitable trust. [2001 , c. 550 , Pt. A , §1 (NEW) .]

[2003 , c. 171 , §1 (AMD) .]

2. Application; funds. The Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration of public charities.

[2001 , c. 550 , Pt. A , §1 (NEW) .]

3. Gift. A gift to a public charity made for a public charitable purpose is deemed to have been made with a general intention to devote the property to public charitable purposes, unless otherwise provided in writing in the gift instrument.

[2001 , c. 550 , Pt. A , §1 (NEW) .]

4. Party to proceedings. The Attorney General must be made a party to all judicial proceedings in which the Attorney General is interested in the performance of the Attorney General's duties under subsection 2.

[2001 , c. 550 , Pt. A , §1 (NEW) .]

5. Investigation. The Attorney General may conduct an investigation using the methods set forth in subsections 6 and 7 if:

A. The Attorney General reasonably believes that a public charity has engaged or is about to engage in one of the following acts or practices:

(1) Consummation of a conversion transaction as defined in section 194-B without compliance with the applicable provisions of sections 194-C through 194-H; or

(2) The application of funds or assets of a public charity:

(a) In violation of statute;

(b) For noncharitable purposes unrelated to the operations of the public charity; or

(c) For private inurement or excess benefits provided to directors, officers, disqualified persons or others deemed insiders under applicable federal law for tax-exempt organizations; and

[2001 , c. 2 , Pt. A , §5 (COR) .]

B. The Attorney General has applied to a Justice of the Superior Court for approval to conduct the investigation and the justice has granted that approval. The application for approval may be filed ex parte, and the justice shall approve the application if the justice finds that the conditions set forth in paragraph A have been met. [2001, c. 550, Pt. A, §1 (NEW).]

[2001, c. 2, Pt. A, §5 (COR) .]

6. Scope and powers related to investigation. The authority of the Attorney General to conduct an investigation under this section is limited to investigation of the acts or practices described in subsection 5, paragraph A. In conducting the investigation, the Attorney General has authority to:

- A. Take testimony under oath; [2001, c. 550, Pt. A, §1 (NEW).]
- B. Examine or cause to be examined any documentary material of whatever nature relevant to such acts or practices; and [2001, c. 550, Pt. A, §1 (NEW).]
- C. Require attendance during examination of documentary material under paragraph B of any person having knowledge of the documentary material and take testimony under oath or acknowledgement in respect to that documentary material. [2001, c. 550, Pt. A, §1 (NEW).]

[2001, c. 550, Pt. A, §1 (NEW) .]

7. Taking testimony; examining documents. The taking of testimony and examination under subsection 6 must take place in the county where the testifying person resides or has a place of business or, if the parties consent or the testifying person is a nonresident or has no place of business within the State, in Kennebec County.

A. Notice of the time, place and cause of the taking of testimony, examination or attendance under this subsection must be given by the Attorney General at least 30 days prior to the date of the taking of testimony or examination, except that, upon application and good cause shown, a Justice of the Superior Court may order a shorter period of notice, but not less than 10 days. [2001, c. 550, Pt. A, §1 (NEW).]

B. Service of a notice under paragraph A may be made by:

- (1) Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;
- (2) Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or
- (3) Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business. [2001, c. 550, Pt. A, §1 (NEW) .]

C. Each notice under this subsection must:

- (1) State the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person;
- (2) State the general subject matter of the investigation, the alleged violation that is under investigation and the title and section of statute, if any, governing the alleged violation;
- (3) Describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the material demanded;
- (4) Prescribe a return date by which the documentary material must be produced; and
- (5) Identify the members of the Attorney General's staff to whom the documentary material must be made available for inspection and copying. [2001, c. 550, Pt. A, §1 (NEW).]

D. A notice to produce documentary information or to give testimony under this subsection may not contain a requirement that would be unreasonable if contained in a subpoena duces tecum issued by a court of the State and may not require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of the State. [2001, c. 550, Pt. A, §1 (NEW).]

E. Any documentary material or other information produced by a person pursuant to this subsection and subsection 6 may not, unless otherwise ordered by a court of the State for good cause shown, be disclosed to a person other than an authorized agent or representative of the Attorney General unless with the consent of the person producing the documentary material. [2001, c. 2, Pt. A, §6 (COR).]

F. The Superior Court for Kennebec County or a Superior Court in any other county in which a person who is served notice pursuant to this section resides or has that person's usual place of business may issue orders concerning compliance with the notice, modification or quashing of the notice and contempt in the same manner as if the notice were a subpoena governed by Rule 45 of the Maine Rules of Civil Procedure. The recipient of a notice under this section has the protections accorded by Rule 45 to a person who is subject to a subpoena. [2001, c. 550, Pt. A, §1 (NEW).]

[2001, c. 2, Pt. A, §6 (COR).]

8. Authority regarding conversion proceedings. If a public charity files notice of a conversion transaction under section 194-D or applies for approval of such a transaction under section 194-E or 194-F, the authority of the Attorney General with regard to the notice or approval and the proceedings for approval are governed by sections 194-B to 194-K and the provisions of this section do not apply.

[2001, c. 550, Pt. A, §1 (NEW).]

9. Notice to the Superintendent of Insurance. If the Attorney General intends to conduct an investigation of a public charity that is subject to regulation by the Superintendent of Insurance, the Attorney General shall notify the superintendent that an investigation is being initiated. The Attorney General shall also notify the superintendent of the resolution of any such investigation.

[2001, c. 550, Pt. A, §1 (NEW).]

SECTION HISTORY

RR 2001, c. 2, §§A5,6 (COR). 2001, c. 550, §A1 (RPR). 2003, c. 171, §1 (AMD).

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